IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 21318 of 2003

Between:

M/s. M.S.P. Granites, rep by its Prop. M.S. Palanivelu, S/o. Sabapathy,
R/o. H.NO. 34, 'H' Block, 17th Main Raod, Anna Nagar West, Chennai.

..... PETITIONER

AND

1 The Govt. of A.P. rep by its Secretary, Industries and Commerce Department, Secretariat, Hyderabad.
2 The Director, Mines & Geology, Hyderabad, B.R.K.R. Buildings, 8th Floor, Tank Bund Road, Hyderabad.
3 The Asst. Director of Mines & Geology, Tekkali, Srikakulam Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or writ one in the nature of writ of Mandamus declaring the action of the respondents in Memo No.13706/M.II(1)/2003-04 & 13707/M.II(1)/2003-04, dt. 24-9-2003 rejecting the application of the petitioner for appointment of survey from the Survey Settlement and Land Records or any private agency to find out as to alleged encroachment and illegal quarry in Survey No. 71, lingalavalasa Village, Tekkali Mandal, Srikakulam Dist. is done by the petitioner, as arbitrary illegal, unjust and violative of principles of natural justice consequently call for the records set aside the same and direct the respondents to hear the revision only after such survey.

Counsel for the Petitioner: SMT.N.SHOBA

Counsel for the Respondents 1 to 3: G.P. for Industries & Commerce

The Court made the following :

ORDER:

Heard Smt. N.Shoba, learned counsel appearing on behalf of the petitioner and the Government Pleader for Industries and Commerce appearing on behalf of the respondents 1 to 3.

The petitioner herein, a quarry lease holder, filed this Writ Petition, *inter alia*, seeking for a Writ of Mandamus declaring the impugned memo dated 24.09.2003 issued by the first respondent rejecting interim application filed by him pending revision seeking for appointment of surveyor for the purpose of location of encroachments, if any, as bad, illegal and void.

The case of the petitioner is that quarry lease for colour granite in survey no.. 71 in Lingalavalasa village, Tekkali mandal, Srikakulam district, was granted on 22.12.1998, initially in favour of M/s. Dynamic Mines Corporation. Later on, it was transferred in favour of the petitioner as per the proceedings of the second respondent herein dated 28.11.2000 and since then, the petitioner has been carrying on the operations within the boundaries as marked by the surveyor and existing by its' predecessor M/s. Dynamic Mines Corporation since the year 1997. It is the case of the petitioner that boundary pillars are maintained and intact. However, at the instance of an adjacent lessee for fixation of boundary lines, a survey appears to be made whereupon a notice was issued on 26.09.2002 by the third respondent stating that the petitioner worked outside the leased area and extracted 12 granite blocks measuring 50.583 cubic meters, which falls beyond the buffer zone. The petitioner filed explanation therefor denying the same and further asserting that the entire work was only being done within the marked boundaries i.e. leased area, and there was no removal of any blocks from outside. In spite of the same, the third respondent herein issued notice dated 31.01.2003 holding against the petitioner and sought a demand for Rs. 4,55,248/-. However, the petitioner paid a sum of Rs. 75,784/- vide challan no.

11940, dated 18.02.2003 and challenging the said demand notice dated 31.01.2003 in a regular appeal before the second respondent herein. However, another show cause notice was issued on 04.04.2003 by the third respondent herein finding fault again with the petitioner in respect of 1212 cubic meters, to which the petitioner has once again filed a detailed explanation on 10.04.2003 denying any such operations by way of any encroachment. The case of the petitioner is that the entire impugned action as directed against him is purely due to political reasons and at the behest of rival businessmen. It is pointed out that there is a complete mistake on the part of the respondents in blaming the petitioner and there exist no such two pits and therefore, the entire allegations are wholly incorrect and even the map prepared during their first visit viz. 17.03.2002 to 10.04.2002, is totally wrong and does not tally with ground reality. Apparently, basing upon the said map dated 10.04.2002 alone, the entire blame is sought to be put against the petitioner. Even the Vigilance Department restates the very same allegation as found on 20.03.2003 and further states that there was second encroachment by the petitioner and pointed out that there are two pits 'A' & 'B', which, according to the petitioner, is totally incorrect. It is pointed that the alleged two pits 'A' & 'B' are only one and the same. In spite of the same, the third respondent herein issued another demand notice dated 19.04.2003 for the alleged 1212 cubic meters claiming one time seigniorage fee of Rs. 18,18,000/- and 10 times penalty of Rs. 1,99,98,000/-. Challenging the same, the petitioner had again filed a regular appeal as provided for under Rule 35 of the Andhra Pradesh Minor Mineral Concession Rules, 1966. During the course of hearing before the second respondent herein, it was found that there is a mistake and there is a confusion amongst the reports concerned, and in spite of the same, both the appeals filed by the petitioner were dismissed on 03.07.2003. Challenging the same, the petitioner had filed a revision before the first respondent, *inter alia,* raising several grounds including denial of any encroachment and the total incorrectness in regard to the alleged survey or inspections made, or even identity. During the pendency of the said revision, the petitioner

had filed the present interim application seeking for a survey to be made by proper authorities concerned after due notice and opportunity so that the allegations as sought to be made against the petitioner can be found to be *prima facie* right or wrong. According to the petitioner, it is highly impossible to extract such huge quantity of 1212 cubic meters in a short period of alleged encroachment between 12.10.2002 to 20.03.2003. Even otherwise, there exists no such encroachment and there was no proper survey conducted by the authorities concerned with prior notice and opportunity. It is the case of the petitioner that there was no encroachment at any time or much later and there is denial to the existence of any such pit as pointed out in the sketch prepared on 20.03.2003. Further, it is contended that the entire proceedings since inception are almost one sided. In view of the same, it is desirable that a fresh survey be made. However, without considering all these aspects, the respondents rejected the said application and posted the main revision for hearing. Hence, the Writ Petition.

At the time of admission of this Writ Petition, this Court, as per the order dated 30.09.2003, granted interim stay of hearing of the revision.

Contesting the claim of the petitioner, the respondents 1 to 3 filed their counter affidavit through the Assistant Secretary concerned from the first respondent to the effect that no doubt the petitioner holds a quarry lease, however, it was pointed out that a representation has been received from M/s. Karunai Granites on 28.02.2002 stating that there is unsettled boundary dispute between their leasehold and their neighbouring leasehold, hence, they requested to take up resurvey of their leased areas and adjacent leased areas and to fix the boundary. Therefore, survey was taken up from 17.03.2002 to 10.04.2002 with a team of surveyors, A.M.O., office of the DMG, along with surveyor from the office of the M.R.O., Tekkali under the

supervision of the then Assistant Director of Mines & Geology, Srikakulam. It was also stated that survey was conducted in the presence of representatives of M/s. Karunai Granites, the petitioner, M/s. Lakshminarasimha Enterprises and M/s. Kranthi Granites. It was noticed that certain portion of M/s. Karunai Granites has been covered by dumps generated by the petitioner and M/s. Lakshminarasimha Enterprises. The said encroachment is in the buffer zone to an extent of 0.101 hectares and about 12 blocks were lying on that area which was quantified for 50.583 cubic meters as shown in the sketch prepared at the time of survey during the above period. Accordingly, a notice was issued by the second respondent demanding Rs.4,55,248/- towards normal seigniorage fee and 5 times penalty. In response, the petitioner had already paid Rs. 75,875/- towards normal seigniorage fee on 18.02.2003 and requesting not to insist upon the penalty. Further, it is pointed out by the petitioner that there is no such encroachment on the part of the petitioner and the entire allegation is only at the instance of some local people, who want to damage his reputation and business. Thereupon, necessary despatch permits were issued in favour of the petitioner. During the pendency of the first appeal, it is also noticed by the Vigilance Department, who have made inspection and survey on 20.03.2003 that once again there is an encroachment and the quantity quarried was arrived at 1212 cubic meters. Therefore, a show cause was issued by the second respondent demanding Rs.1.99 crores towards normal seigniorage fee and 10 times penalty. Aggrieved thereby, the petitioner filed another appeal before the second respondent. After hearing, the second respondent dismissed the appeal as per the order dated 03.07.2003. Challenging the same, the petitioner filed revision and the interim application filed by him is rightly rejected in view of the fact that the area was inspected and surveyed several times by the Mines Department along with the Mandal Revenue Office and Vigilance and Enforcement Department officials. It is pointed out that all such surveys were conducted in the presence of all lessees in the area including the petitioner, who did not make any objection and challenge the same. Therefore, it is a

clear case of petitioner's encroachment into the buffer zone and extracting granite blocks for which the petitioner is responsible. Hence, there are no merits in the Writ Petition and apparently, the petitioner wants to delay and protract the litigation.

In the reply, the petitioner denied the alleged correctness of surveys as conducted by the respondents and it was submitted that there have been variations and contradictions at each stage and it was further pointed out that during the course of appeal before the second respondent, the Assistant Director himself admitted that he did not inspect the alleged pit before issuing the second notice. It is the case of the petitioner that they were not provided with any opportunity at any stage of the surveys and therefore, the entire process is wholly onesided.

Smt. N.Shobha, the learned counsel appearing on behalf of the petitioner submits that having regard to the facts and circumstances of the case and the chequered events leading to more than one survey alleged to have been conducted by the respondents themselves, it is quite necessary to conduct a proper survey in the presence of all rather than placing reliance on any such one sided reports. Further, it is also her case that having regard to seriousness of the allegations, a party can not be mulcted with any liability without there being any cogent and acceptable evidence or material.

The learned Government Pleader appearing on behalf of the respondents submits that in view of the surveys and the reports submitted consistently, there is no error in regard to the said reports and the petitioner is only trying to get away from the said liability with false allegations.

Considering all these and other submissions made and on perusal of the material, the question which arises for consideration is as to whether on the facts and circumstances, the first respondent was right in rejecting the interim application filed by the petitioner pending a substantive revision for conducting a survey ?

There is no dispute to the fact that the petitioner is a transferee quarry lease holder and carrying on its operations. According to the petitioner, the boundary lines were fixed even at the time when the lease was granted to it's predecessor and they have been in existence since 1997 onwards and the entire operations are well within the said boundary lines and not beyond. It is his further case that at the instance of local people and rival businessmen, entire impugned procedure has been started and there is serious dispute in regard to the surveys alleged to have been conducted on all these allegations and it is the petitioner's case that there was no proper survey. The petitioner points out that the sketch as prepared during the course of these surveys and showing of alleged pits is wholly erroneous and does not correspond to the situation on the site.

As evident from the counter affidavit filed by the first respondent, it is only in pursuance of a representation alleged to have been filed by a neighbouring lease holder M/s. Karunai Granites on 28.02.2002 raising a dispute as to the unsettled boundaries, the entire process appears to have been initiated. No doubt, it is stated in the counter affidavit that the survey was conducted even in March and April 2002 along with a team of officers in the presence of all the concerned lease holders. However, there is nothing on record to show that any prior notice or intimation was given to them nor they were put to the notice of the allegations in the complaint received by them. It is the case of the respondents that it is only the representatives of all such lease holders including the petitioner, that were present during the course of survey. Even the subsequent survey made by the

Vigilance Department is, admittedly, without any prior notice or in their presence. On the basis of the aforesaid survey reports on more than occasion, the demand is straight away made against the petitioner on the ground of making encroachment on the neighbouring area and extracting mineral. As can be seen from the alleged representation of M/s. Karunai Granites, there exists an unsettled boundary dispute between its own leased area and the neighbouring lease area and whereas all the alleged surveys are directed against the petitioner and complaining against the encroachments and making the demands. Having regard to the nature of complaint as filed by a neighbouring lease holder, necessarily it follows that primarily the boundaries have to be settled, *inter se,* between the lease hold areas of the respective lessees. Though it is stated on behalf of the respondents that notice was given to M/s. Karunai Granites, the petitioner, M/s. Lakshminarasimha Enterprises and M/s. Kranthi Granites, however, there is nothing on record to support that there was participation by them. Apparently, on receipt of the complaint from M/s. Karunai Granites, straight away action is sought to be initiated against the petitioner without looking at the correctness of the main dispute for fixation of the boundary, if it really exists. Even the alleged surveys as sought to be made on behalf of the respondents, are not comprehensive enough by inclusion of the responsible and concerned officers except barely saying that the officers from each department were represented. This itself would show that there was no serious attempt on the part of the respondents to find out the real dispute and come to conclusion, before one is sought to be blamed against.

No doubt, this Court is aware of the fact that substantive revision is pending before the first respondent involving almost very same questions and the present Writ Petition is filed only against interlocutory order and therefore, no venture can be made to go into the merits on either side. However, having regard to the nature of the allegations as made from both the sides vis-à-vis the impugned

order, it is quite clear that the necessity for any such survey, jointly or otherwise, to be conducted has not been properly reflected upon nor has come up for consideration under the impugned orders dated 24.09.2003. Except stating that the request of the petitioner is rejected, no other reason has been given to show the warranting reasons as pointed out by the petitioner on each of the aspects especially in regard to the identity of the boundaries, correctness of the sketch map as prepared and also in regard to the existence of the pits, etc. are not sound. All these matters can as well be taken into consideration during the course of the hearing of the revision. However, *prima facie,* it is seen that the entire course of events under the surveys alleged to have been conducted are not from a proper perspective nor comprehensive enough, to have a joint survey in the presence of responsible officers not only from the Mining Department, but also from the Survey Department including the presence of all the lessees as pointed out in the counter affidavit. Necessarily it follows that all these aspects have to be borne in mind before finding out if really there is an encroachment or any illegal operations are carried out by the petitioners without which any pointer towards the petitioner basing on a nonexistent and unacceptable evidence and material apart from being only on onesided versions, is unsustainable not only on facts but also under law.

However, in view of the same, it has to be held that the rejection of the petitioner's request, though at interlocutory stage, can not be valid and accordingly, liable to be set aside. However, keeping in view of the long pendency of the issue and involvement of several other neighbouring lessees in the alleged complaint, it is felt more desirable that the Revision itself can as well be disposed of by taking into consideration all these aspects and issuance of notice to all the concerned, on merits in accordance with law. It is also open for the first respondent to consider the similar requests in the main revision itself and give proper directions on the finding of exigency and the warranting circumstances.

The Writ Petition is, accordingly, allowed setting aside the impugned order dated 24.09.2003. The first respondent is directed to dispose of the revision within a period of three months from the date of receipt of copy of this order, subject to the above observations, after giving notice and opportunity to all the sides. No costs.

(B.Prakash Rao, J.)

22.03.2005

DRK

That Rule Nisi has been absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Tuesday, the twenty second day of March Two thousand and five.

… Registrar

Copy to:

1 The Secretary, Industries and Commerce Department, Govt. of A.P., Secretariat, Hyderabad.
2 The Director, Mines & Geology, Hyderabad, B.R.K.R. Buildings, 8th Floor, Tank Bund Road, Hyderabad.
3 The Asst. Director of Mines & Geology, Tekkali, Srikakulam Dist.

4 Two CCs to the G.P. for Industries & Commerce, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5 Two CD copies.